

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

KEITH MASON,

Plaintiff,

vs.

WARDEN BILLY MITCHEM, et al,

Defendants.

CV 01-S-706-S

ENTERED

SEP 11 2001

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on July 25, 2001, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed for failing to state a claim upon which relief can be granted under 28 U.S.C. § 1915A(b). The plaintiff filed objections to the report and recommendation on August 22, 2001.


Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. The court would further decree that plaintiff's complaint is due to be dismissed because he has failed to show that the defendants acted in reckless disregard to his safety. Plaintiff has made no allegation that his

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present condition of confinement at W. E. Donaldson Correctional Facility is such that he is subject to a "pervasive risk of harm . . . by other inmates." *Abrams v. Hunter*, 910 F.Supp. 620, 624 (M.D. Fla. 1995), *affirmed*, 100 F.3d 971 (11th Cir. 1996) *citing Martin v. White*, 742 F.2d 469, 474 (8th Cir. 1984) and *Branchcomb v. Brewer*, 669 F.2d 1297,1298(8th.Cir. 1982). Nor has the plaintiff alleged that "violence . . . occur[s] . . . with sufficient frequency that . . . prisoners . . . are put in reasonable fear for their safety and . . . prison officials [are reasonably apprised] of the existence of the problem and the need for protective measures." *Abrams*, 910 F.Supp at 624-625, *citing Withers v. Levine*, 615 F.2d 158, 161 (4th Cir. *cert. denied*, 449 U.S. 849, 101 S.Ct. 136, 66 L.Ed.2d 59 (1980) (other citations omitted).

Accordingly, the complaint is due to be dismissed for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915A(b). An appropriate order will be entered.

DATED this 11th day of September, 2001.


UNITED STATES DISTRICT JUDGE